IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3393 OF 2004

Champabai S. Munot & Anr. .. Petitioners

versus

Motilal B. Gagrani .. Respondent

...

Mr.P.N. Joshi for the petitioners.

Mr.N.R. Bubna i/b R.S.Apte for the respondents.

CORAM : D.G. KARNIK, J

DATED : 30th August 2004

P.C:-

1. Heard the learned counsel for the parties.

2. The appellate Court has recorded a finding of fact that the petitioner had failed and neglected to pay arrears of rent within one month of the notice of demand. No application for determination standard rent was filed by the petitioner nor did he deposit the arrears of rent on or before the first day of hearing of the suit.

3. The learned counsel for the petitioner submits

that a cheque of Rs.5,000/- was sent but not encashed by the respondent and hence he was not a defaulter. The appellate Court has considered all the amounts paid by the petitioner since the inception of the tenancy and has come to the conclusion that Rs.8,000/- were due on the date of the suit notice. Assuming therefore, that a cheque of Rs.5,000/- were sent by the petitioner on 31st July 1991 it was not a tender of the full amount and on the date of the suit notice, the petitioner was in arrears of rent for a period of more than six months. The arrears of rent were not paid within one month of the demand and hence, decree for possession has rightly been passed.

4. Whether the petitiner was in arrears of rent being a finding of fact, I am not inclined to interfere in exercise of a writ jurisdiction.

5. Petition rejected.

6. At the request of the learned counsel for the petitioner and with the consent of the learned counsel for the respondent, petitioner is granted one year’s time for vacating of the suit premises subject to the petitioner filing an usual undertaking of himself and all other adult members in this Court within a period of four weeks.

D.G. KARNIK,J